

2013 DRAFTING REQUEST

Bill

Received: **9/5/2013** Received By: **btradewe**
Wanted: **As time permits** Same as LRB:
For: **Robert Cowles (608) 266-0484** By/Representing:
May Contact: **Marney Hoefler** Drafter: **btradewe**
Paul Kent Addl. Drafters:
Subject: **Environment - water quality** Extra Copies: **RNK**

Submit via email: **YES**
Requester's email: **Sen.Cowles@legis.wisconsin.gov**
Carbon copy (CC) to: **Sen.Farrow@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Variance from water quality standards for phosphorus

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	btradewe 11/4/2013	csicilia 10/7/2013	jfrantze 10/7/2013	_____	srose 10/7/2013		
/P2	btradewe 1/8/2014	csicilia 11/5/2013	jmurphy 11/6/2013	_____	mbarman 11/6/2013		
/P3	btradewe 1/17/2014	csicilia 1/10/2014	jmurphy 1/10/2014	_____	srose 1/10/2014		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1		csicilia 1/20/2014	rschluet 1/20/2014	_____	mbarman 1/21/2014	mbarman 1/22/2014	State S&L

FE Sent For:

@
INTRO

<END>

2013 DRAFTING REQUEST

Bill

Received: **9/5/2013** Received By: **btradewe**
Wanted: **As time permits** Same as LRB:
For: **Robert Cowles (608) 266-0484** By/Representing:
May Contact: **Marney Hoefer** Drafter: **btradewe**
Paul Kent Addl. Drafters:
Subject: **Environment - water quality** Extra Copies: **RNK**

Submit via email: **YES**
Requester's email: **Sen.Cowles@legis.wisconsin.gov**
Carbon copy (CC) to: **Sen.Farrow@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Variance from water quality standards for phosphorus

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	btradewe 11/4/2013	csicilia 10/7/2013	jfrantze 10/7/2013	_____	rosee 10/7/2013		
/P2	btradewe 1/8/2014	csicilia 11/5/2013	jmurphy 11/6/2013	_____	mbarman 11/6/2013		
/P3	btradewe 1/17/2014	csicilia 1/10/2014	jmurphy 1/10/2014	_____	rosee 1/10/2014		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1		csicilia 1/20/2014	rschluet 1/20/2014	_____	mbarman 1/21/2014		State S&L

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: **9/5/2013** Received By: **btradewe**
Wanted: **As time permits** Same as LRB:
For: **Robert Cowles (608) 266-0484** By/Representing:
May Contact: **Marney Hoefer** Drafter: **btradewe**
Paul Kent Addl. Drafters:
Subject: **Environment - water quality** Extra Copies: **RNK**

Submit via email: **YES**
Requester's email: **Sen.Cowles@legis.wisconsin.gov**
Carbon copy (CC) to: **Sen.Farrow@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Variance from water quality standards for phosphorus

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	btradewe 11/4/2013	csicilia 10/7/2013	jfrantze 10/7/2013	_____	roose 10/7/2013		
/P2	btradewe 1/8/2014	csicilia 11/5/2013	jmurphy 11/6/2013	_____	mbarman 11/6/2013		
/P3		csicilia 1/10/2014	jmurphy 1/10/2014	_____	roose 1/10/2014		

1/1 gs 1/20/14

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: **9/5/2013** Received By: **btradewe**
Wanted: **As time permits** Same as LRB:
For: **Robert Cowles (608) 266-0484** By/Representing:
May Contact: **Marney Hoefer** Drafter: **btradewe**
Paul Kent Addl. Drafters:
Subject: **Environment - water quality** Extra Copies: **RNK**

Submit via email: **YES**
Requester's email: **Sen.Cowles@legis.wisconsin.gov**
Carbon copy (CC) to: **Sen.Farrow@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Variance from water quality standards for phosphorus

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	btradewe 11/4/2013	csicilia 10/7/2013	jfrantze 10/7/2013	_____	srose 10/7/2013		
/P2	btradewe 1/8/2014	csicilia 11/5/2013	jmurphy 11/6/2013	_____	mbarman 11/6/2013		
/P3				_____			

P3 gs 1/9/14

[Signature] 1/10/14

FE Sent For:

<END>

1/9/2014 Call from Matt in Sen. Farrow's office: Sen. Coules is taking over the draft. He should be the requester, but Sen. Farrow should still get a copy of the draft.

Ret

2013 DRAFTING REQUEST

Bill

Received: **9/5/2013** Received By: **btradewe**
Wanted: **As time permits** Same as LRB:
For: **Paul Farrow (608) 266-9174** By/Representing: **Himself**
May Contact: **Marney Hoefer** Drafter: **btradewe**
Paul Kent Addl. Drafters:
Subject: **Environment - water quality** Extra Copies: **RNK**

Submit via email: **YES**
Requester's email: **Sen.Farrow@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Variance from water quality standards for phosphorus

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	btradewe 11/4/2013	csicilia 10/7/2013	jfrantze 10/7/2013	_____	srose 10/7/2013		
/P2		csicilia 11/5/2013	jmurphy 11/6/2013	_____	mbarman 11/6/2013		

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: **9/5/2013** Received By: **btradewe**
Wanted: **As time permits** Same as LRB:
For: **Paul Farrow (608) 266-9174** By/Representing: **Himself**
May Contact: **Marney Hoefer** Drafter: **btradewe**
Paul Kent Addl. Drafters:
Subject: **Environment - water quality** Extra Copies: **RNK**

Submit via email: **YES**
Requester's email: **Sen.Farrow@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Variance from water quality standards for phosphorus

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	btradewe 10/4/2013	csicilia 10/7/2013	jfrantze 10/7/2013	_____	srose 10/7/2013		

FE Sent For:

p2 gs
11/5
13
Jan
11/5
<END>
Jan
11/6

2013 DRAFTING REQUEST

Bill

Received: **9/5/2013** Received By: **btradewe**
Wanted: **As time permits** Same as LRB:
For: **Paul Farrow (608) 266-9174** By/Representing: **Himself**
May Contact: **Marney Hoefer** Drafter: **btradewe**
Paul Kent Addl. Drafters:
Subject: **Environment - water quality** Extra Copies: **RNK**

Submit via email: **YES**
Requester's email: **Sen.Farrow@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

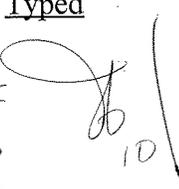
Topic:

Variance from water quality standards for phosphorus

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	btradewe	PI cjs 10/2 13		Re 4			
FE Sent For:		PI cjs 10/7 13					

<END>

Tradewell, Becky

From: Gibson-Glass, Mary
Sent: Monday, August 19, 2013 4:10 PM
To: Kite, Robin; Tradewell, Becky
Subject: FW: Meeting and Drafting Request
Attachments: 324888602-Phosphorus Draft 081213.docx; Phosphorus Drafting Request.docx

Becky and Robin,

Could one of you get back to her? Note that she wants to set up a meeting.

Thanks

Mary

From: Brabender, Lindsey
Sent: Monday, August 19, 2013 4:07 PM
To: Gibson-Glass, Mary
Subject: Meeting and Drafting Request

Mary,

Our office would like to submit a drafting request regarding the subject matter attached. The two documents affixed to this document are (1) the suggested draft language and (2) a document describing the problem prompting the request and how we would like to deal with it.

I think that the best thing to do would be to set up a meeting between you, myself and Paul Kent (an attorney who we have been working with on this issue) and potentially the Senator if he can make it. It is a very intricate area from what I have gathered so I think an in-person meeting would probably end up saving us time in the long run.

Take a look at the attachments and please let me know when you would be available for a meeting.

Sincerely,
Lindsey

Lindsey Brabender
Policy Advisor
Office of State Senator Paul Farrow
33rd Senate District

TO: Legislative Reference Bureau – Legal
FROM: Lindsey Brabender, Office of Sen. Paul Farrow

DATE: August 19, 2013
RE: Drafting Request – Phosphorus Effluent Discharger Regulatory Reform

In 2010, the DNR finalized a rule requiring point sources to reduce the phosphorus in their effluent discharges to nearly unobtainable levels (0.1 mg/L in most cases). Since Wisconsin was the first state in the Midwest and one of the first in the nation to set numerical standards anywhere near this stringent, cost-effective technologies for the treatment of phosphorus had not yet been developed.

Generally, treatment to standards set forward in the rule is going to require significant bricks and mortar investment by point sources. Moreover, compliance tools like adaptive management and trading are proving to be unhelpful for most point sources. As a result, Wisconsin has become a regulatory island and its regulated community, in this case consisting of municipal water utilities, paper mills, food processors, and cheesemakers is paying the price. The estimated costs of compliance for the rule range from \$2 billion to \$4.9 billion, likely toward the higher end of that range. These high costs, which are not being borne by industrial facilities or municipalities in our neighboring states, are likely to cause plant closures and layoffs in some parts of Wisconsin and will result in massive rate hikes on any individuals or businesses connected to municipal sewer systems.

Based upon information from industry groups, municipalities, and contained in newspaper reports, it has become clear that significant social and economic harm will occur to Wisconsin unless steps are taken by the legislature to provide relief and flexibility towards compliance with this rule.

In order to provide such relief, please draft legislation to accomplish the goals outlined in the following phosphorus compliance concept. In addition, please base the legislation as closely as possible on the attached suggested language. Finally, please have the drafter contact me at their earliest possible convenience to schedule a time to meet with our office and interested stakeholders to address questions regarding this proposal and the attached language.

Phosphorus Compliance Concept

1. **Objectives.** Provide an additional phosphorus compliance option for point sources that can provide the following:
 - Certainty for planning and implementation
 - Avoid large capital and operating costs with advanced filtration
 - Make real progress in reducing phosphorus from point and nonpoint sources

2. **Basic Structure.** Utilize a streamlined variance concept similar to that used here for chlorides and in Montana for phosphorus. The key elements would be:
 - A statewide finding on economic impact through a study by DOA. The finding would be reviewed every 3 years.
 - An opt-in provision for permittees
 - A requirement for interim limits similar to that used in adaptive management

NR 217.18

- A requirement for phosphorus reduction in nonpoint sources undertaken by the permittees
- Like Montana, the variance extends for 20 years (four permit terms)
- A less rigorous set of requirements for *de minimis* dischargers – facilities less than 0.1 mgd

3. Interim Limits. Interim limits would be based on:

- Achieving decreasing phosphorus levels over the four permit terms at 0.8 mg/l; 0.6 mg/l; 0.05 mg/l; and 0.04 mg/l
- A permittee could demonstrate that a higher interim limit is warranted based on an assessment of optimized conventional technology appropriate for the source determined by a comparison of the technology used in surrounding states

4. Phosphorus Reductions. In addition to achieving the interim limit, permittees would be responsible for achieving reductions of phosphorus from nonpoint sources equal to the difference of their current discharge level and a target value of 0.2 mg/l (based on the Fox TMDL point source level). Such reductions could be achieved by any of the following:

- Payment of \$50/pound to a county within the dischargers basin to provide cost share dollars and staff for nonpoint projects. The county would have certain reporting obligations to DNR
- A project approved by the Department implemented by the permittee that results in a phosphorus reduction
- A project approved by the Department implemented by a third party that results in a phosphorus reduction

5. Existing Permits. Options to allow existing permittees to opt into this variance.

PRIVILEGED AND CONFIDENTIAL

Phosphorus Compliance Options

Section 283.151 is created to read:

283.151 MULTIDISCHARGER VARIANCE FOR PHOSPHORUS.

(1) PURPOSE. The treatment of wastewater to meet water quality standards for phosphorus, and wasteload allocations for phosphorus in approved total maximum daily loads that are derived from water quality standards, is likely to result in substantial and widespread adverse social and economic impacts on a statewide basis. The purpose of this section is to achieve the phosphorus water quality criteria in the most economically efficient manner, and as soon as possible, taking into consideration contributions of phosphorus from point and nonpoint sources in a watershed.

(2) REQUEST FOR VARIANCE.

(a) Where a determination has been made pursuant to sub (3) that the water quality standards for phosphorus, or wasteload allocations for phosphorus in approved total maximum daily loads that are derived from water quality standards, will result in substantial and widespread adverse social and economic impacts, an existing point source may submit a request for a variance under this section as part of a permit application for reissuance or as a request for permit modification.

(b) The department shall grant the variance request upon showing that:

1. The point source is in a category for which Department of Administration has, pursuant to sub (3), determined the water quality standards for phosphorus, or the wasteload allocations for phosphorus in approved total maximum daily loads that are derived from water quality standards, are likely to result in substantial and widespread adverse social and economic impacts;
2. The point source requests the limits set forth in sub. (4) or the interim permit limits set forth in sub. (5)(a) 1.-4, whichever are applicable, be incorporated into the permits; and
3. The request contains an analysis of the point source's facility operations to optimize phosphorus reductions with existing infrastructure which will comply with the conditions set forth in sub (4) or (5).

(c) The department shall incorporate the interim permit limits and phosphorus reduction requirements set forth in sub. (4) or (5) and any determination made pursuant to sub. (6) into the permit.

(3) DETERMINATION OF SUBSTANTIAL AND WIDESPREAD ADVERSE SOCIAL AND ECONOMIC IMPACTS.

PRIVILEGED AND CONFIDENTIAL

(a) Within 60 days of the effective date of this section [LRB inserts date], the Department of Administration shall determine whether the phosphorus water quality standards or wasteload allocations for phosphorus in approved total maximum daily loads that are derived from water quality standards will result in a substantial and widespread adverse social and economic impacts on a statewide basis for point sources subject to permits under ss. 283.31 or 283.33.

(b) Department of Administration's determination in this subsection shall contain the following:

1. A calculation of the costs of complying with more stringent water quality based effluent limits.
2. A determination whether the cost of compliance will result in substantial adverse social and economic impacts.
3. A determination whether the cost of compliance will result in widespread adverse social and economic impacts.
4. If the facility is a publicly owned treatment or collection facility, a comparison of the state median household income to the cost of compliance to the state.
5. A review of the cost of compliance for point source discharges from lagoon systems and systems discharging less than 0.1 million gallons per day of wastewater.

(4) VARIANCE FOR MINOR DISCHARGES. Point sources with discharges from lagoon wastewater treatment facilities, or discharges from facilities of 0.1 million gallons per day or less shall comply with the following:

- (a) A limit that maintains the performance of the facility at a level equal to the performance of the facility on the effective date of this section [LRB inserts date].
- (b) By the end of the first permit term of a permit reissued after the effective date of this act, a permittee shall implement a plan to optimize the treatment capabilities of the existing facility.
- (c) By the end of the second permit term of a permit reissued after the effective date of this act, the effluent limit shall be set at the level of optimized phosphorus reduction allowed without major facility upgrades calculated as a monthly average.

(5) VARIANCE FOR OTHER DISCHARGES.

(a) Interim permit limits. Point sources with discharges not covered under sub. (4) shall comply with the following interim permit limits:

PRIVILEGED AND CONFIDENTIAL

1. By the end of the first permit term of a permit reissued after the effective date of this act, the effluent limit shall be set at the greater of 0.8 mg/l or a 20% reduction of the upper 99th percentile of the 30 day average discharge.
2. By the end of the second permit term of a permit reissued after the effective date of this act, the effluent limit shall be set at the greater of 0.6 mg/l or the limit that can be achieved by the application of conventional control technology appropriate for the category of the source.
3. By the end of the third permit term of a permit reissued after the effective date of this act, the effluent limit shall be set at the greater of 0.5 mg/l or the limit that can be achieved by the application of conventional control technology appropriate for the category of the source.
4. By the end of the fourth permit term of a permit reissued after the effective date of this act, the effluent limit shall be set at the greater of 0.4 mg/l or the limit that can be achieved by the application of conventional control technology appropriate for the category of the source. This permit shall also include a compliance schedule not to exceed 5 years following the end of the fourth permit requiring compliance with the phosphorus water quality standard or wasteload allocations for phosphorus in approved total maximum daily loads that are derived from water quality standards.
5. For purposes of this subsection, conventional control technology, is the optimal use of technology appropriate for the source of the category that is in use at similar facilities in the majority of the states adjoining Wisconsin.

(b) Phosphorus source reduction.

1. In addition to achieving the interim limit in each permit term as set forth in sub. (a), the point source shall implement one of the measures in this paragraph to reduce nonpoint sources of phosphorus in an amount equal to the difference between the amount of pounds of phosphorus discharged by the permittee and a target value of 0.2 mg/l phosphorus.
2. The reduction required under this paragraph shall be achieved by any of the following or combination of the following:
 - a. The discharger makes a payment pursuant to sub. (9) for each pound of phosphorus discharged above the target value. The base payment will be set at \$50 per pound of phosphorus on the effective date of this rule. The base shall be adjusted annually on April 1 of each year with adjustments based on changes in the consumer price index. The amount of payment per pound shall be fixed for the permit term using the base payment in effect in the year that a permit is reissued.
 - b. The point source reaches a binding, written agreement with the department under which the person constructs a project or implements a plan that results in a reduction of

PRIVILEGED AND CONFIDENTIAL

phosphorus from sources within the basin, other than the source covered by the permit, in the amount of the difference between the existing amount of phosphorus discharged and the target value.

c. The point source reaches a binding, written agreement with another person that results in a reduction of phosphorus from sources within the basin in the amount of the difference between the existing amount of phosphorus discharged and the target value to reduce the amount of phosphorus within the basin. Prior to relying on the agreement the point source shall obtain the approval of the department.

(6) REVIEW OF TECHNOLOGY.

(a) Immediately after September 1, 2016, and every 3 years thereafter, the department shall prepare a report regarding updates in treatment technology and limits that are reasonably achievable. The report shall include all of the following:

1. A determination whether technology is reasonably available for treatment to a more stringent limit.
2. A determination whether technology is cost effective.
3. Consultation with impacted sources and other interested parties.
4. An evaluation of whether technology is reasonably available for particular groups of dischargers.

(b) The department shall submit the report to the Department of Administration immediately after September 1, 2016 and every 3 years thereafter. The Department of Administration shall review the report and make a determination within 3 months of receiving the report whether a more stringent effluent limit is appropriate given the availability and cost effectiveness of technology and whether compliance with the phosphorus water quality standard will result in substantial and widespread adverse social and economic impacts for sources subject to permits under ss. 283.31 or 283.33.

(c) The Department of Administration shall provide public notice and the opportunity for public comment on the determination pursuant to par. (b). The comment period shall be at least 30 days.

(d) Any revision or elimination of this variance shall become effective for an individual permittee and incorporated into a permit only after modification or revocation and reissuance of a permit.

(8) EXISTING PERMITS.

If, before the effective date of this act, a permittee was issued a permit that includes water quality based effluent limitations for phosphorus, or a wasteload allocation for phosphorus in approved total maximum daily loads that are derived from water quality standards, and also includes a compliance schedule for submitting compliance options to the department, the permittee may request and be granted the variance for phosphorus as set forth in sub. (2) as one of the variance compliance options.

PRIVILEGED AND CONFIDENTIAL

(9) PAYMENT TO COUNTY.

(a) Requirement for point sources. Point sources demonstrating compliance pursuant to sub. (5)(b)2. shall make the payment to a county within the basin in which the discharge occurs or any other county or project if approved by the department. For purposes of this section a basin shall be determined based on a hydrologic unit code of 8.

(b) Requirements for counties.

1. The payment made under this subsection shall be used for the purposes of providing cost sharing pursuant to s 281.16(3)(e) or (4) or funding of positions to implement phosphorus reduction projects. At least 60% of the funding shall be for providing cost share dollars. If the county hires one full time equivalent person from such funds, 75% of the funding received thereafter shall be for providing cost share dollars.

2. Each county receiving payments under this provision shall submit an annual report to the department, Department of Administration and any discharger that has submitted payments in the previous year. The report shall document and verify the phosphorus projects undertaken, document the associated phosphorus reductions using accepted modeling methodology, and identify any positions funded.

3. The department shall evaluate the county annual reports. If the department determines that the payments are not being used to effectively reduce nonpoint sources of phosphorus, the department may instruct the point source to direct the payments in future years to another county or project approved by the department.

(10) RIGHT TO HEARING. The right to a hearing regarding department decisions made pursuant to this section shall be limited to the right to a hearing pursuant to s. 283.63.

Section 283.13(5) is amended to read as follows:

(5) MORE STRINGENT LIMITATIONS. The department shall establish more stringent effluent limitations than required under subs. (2) and (4) and shall require compliance with such water quality based effluent limitations in any permit issued, reissued or modified if these limitations are necessary to meet applicable water quality standards, treatment standards, schedules of compliance or any other state or federal law, rule or regulation. The department shall require compliance with these water quality based effluent limitations by no later than July 1, 1977, or by a later date as specified in the water quality standard, treatment standard, schedule of compliance or other state or federal law, rule or regulation. In determining a later date for compliance with water quality based effluent limitations for phosphorus, the department may use an adaptive management process that extends over five permit terms.

9/4/13 Meeting with Sen. Farrow, his aide, Lindsey Brabender, and Marney Hafer, of Stafford Rosenbaum, representing the Municipal Environmental Group (municipal wastewater treatment plants)

Marney explained the proposal and answered questions. She indicated that while the DNR rules have flexibility, there is a lack of information on how the flexibility may be used. For example, DNR has not finalized guidance on water quality trading. Some permittees will have compliance requirements begin to apply in 4-6 months. About 200 permits with WQBELs for phosphorus have been issued - about 115 are for municipal wastewater treatment plants.

It wouldn't do any good to repeal the numerical water quality criteria for phosphorus because EPA has approved it. EPA could come in and enforce the criteria if the state repealed it.

What they want is a framework that provides permittees with more certainty and more time - a streamlined variance statute. They want relief for permittees that would not be rejected by EPA. Adaptive management is in DNR's rules and was approved by EPA, but it isn't available in all watersheds and it isn't certain what DNR would require. EPA has also approved Montana's variance (Marney thinks). [She also said that EPA proposed a rule on multi-generator discharges this morning.] They want to limit DNR's discretion, so that permittees know that they can get the variances. ^{rather than} They want to make reasonable progress on reducing phosphorus in the waterbodies, but feel that the water quality standards cannot be achieved through reductions from point sources alone.

Going through the drafting instructions (document titled Phosphorus Compliance Options):

(2) Is the framework of the Variance, and explains how and when a permittee would apply.

(b) 1. She is going to look into the case of "category" and "group" in the proposal and clarify that for us!

The only real requirement, beyond asking for the variance, is the one in 3. - to analyze the operations to optimize reductions with existing infrastructure, to show it can comply with the conditions in the Variance.

(c) The reference to sub. (b) means that if in the review under sub. (b) it was determined that the interim requirements should be changed, then the changed requirements, rather than those in sub. (4) or (5), apply.

(3) (b) This is meant to cover the same issues that would be considered for an individual variance.

4. In practice, EPA is mainly concerned with whether the cost per household would be more than 2% of median household income.

1. It shouldn't say "more stringent". It's just the cost of complying with the WQBELs.

(4) Some small permittees with lagoons are getting very stringent numerical limits, even though if you shut them down completely it wouldn't matter to the quality of the water body. She agrees that it would probably be good to define what a "lagoon" system is.

(a) This should indicate how you measure "performance on the effective date."

(4) (c) "without major facility upgrades" is a phrase that DNR uses in permits now, so they will ^{probably be} comfortable using it without defining it.

This variance ^(for small sources) would not be limited to 4 permit terms but would continue until there is a good treatment technology for lagoons.

(5) ^(a) There need to be averaging periods for these - should be 6 months (e.g. 0.8 mg/l expressed as a 6 month average).

1. to 4. the alternative concerning conventional aboral technology provides an "off ramp." The permittee would have to demonstrate that it can't meet the numeric limit, but that you can apply technology that is being used in 3 of the 4 adjacent states. IF there aren't enough sources ^(facilities) like yours, you couldn't use the statewide variance, but would instead have to seek an individual variance.

1. I explained that we will need to find a different way to describe the "20% reduction of the upper 20th percentile" of the 30 day average discharge" for the purposes of the statute.

A permittee who is already below 0.8 mg/l would be able to increase phosphorus content up to 0.8 mg/l but the requirement under (b) would discourage that, this isn't a problem with antibacksliding or antidegradation under federal law because that only looks at the level in the permit.

Also - when it says at the end of the term - this is like a compliance schedule. First permits would require the technology-based effluent limitation (generally 1 mg/l), the second would require 0.8 (generally), the third 0.5, reaching the new limit by the end of the permit term. 6 months before the end of the first permit term, you have to meet 0.8.

(b) They want to provide options for permittees. Some prefer the certainty of the \$50 paid per month. Others would prefer to conduct

or contract for projects.

(6) The Clean Water Act requires a review every 3 years and requires a public comment period. This would require DNR to lower the interim limits and those would apply to a permittee when the permit is reissued, modified, or renewed and reissued.

Mamey agreed that having any changes published in the administrative register would be a good idea. (They don't want rule-making.)

(8) Permits that have been issued so far give permittees time to submit choices about how they will comply.

(9) Counties would not be required to participate. The county employees know where there are problems with phosphorus runoff from farms, but they don't have the money for cost sharing. She will get back to us about the last two sentences of (b) 1.

283.13(5) They included this because the statute don't mention adaptive management or compliance schedules that go beyond the term of a permit.

9/19/13 Meeting with Marney Hofer and Paul Kent

DOH would make just one determination under sub. (3) which would apply statewide and to all dischargers. See changes to s. 89.21(2)(b)1

But the later determinations could find that technology is available for some categories of sources (this is federal terminology)

The variance for minor discharges is not limited to 4 permit forms. A source may continue to get the variance for the useful life of theagoon or until the amount of the discharge exceeds 1 million gallons/day.

They decided to use a different measure to set the limit for the 1st permit form (see top of p. 3) rather than the one based on the upper 99th percentile of the 30 day average.

Wanted about how much more weight is represented by the \$50/pound payment to construct. That would be a large facility, it would be upwards of 9 million per year at the first permit form.

See page 5 for changes concerning the \$50/pound payment. They proposed there is the need for a 30 day averaging period in sub. (5)(a) 2.

If the project implemented under sub. (5)(b) 2, we could not, until the 2014, collecting MW could ask the dischargers to do more.

Counties are not required to participate under sub. (9).

The concern addressed in sub. (9) (b) 2. was to keep counties from spending all of the \$ on staff. After they have hired a staff person, more of the money needs to be spent on project (concept based on NATCP programs 9/2/14)

The idea of the amendment to s. 283.13 (5) is to encourage the use of adaptive management by giving practitioners more time. This are some pilot projects that they are discovering that measuring the reductions in the field will take a while.

See the additional averaging period - in sub. (5) (a)

From Marney Hooper and Paul Kent 9/19/13

Questions from LRB

1. What is the difference between groups and categories or is it meant to be the same thing? What are the categories? Are there essentially two categories – Minor discharges and all other dischargers? See sections (2)(b)1., (5)(a)1.-4., (6)(a)4.
2. Definition section including: “minor discharge” “major facility upgrade” “basin” *last page*
3. Variance for minor discharge – the length needs to be clarified. What happens after the 2nd permit term? What happens at the end of the lagoons useful life and can a source replace a lagoon with another lagoon?
4. The 20% reduction of the upper 99th percentile of the 30 day average needs to be described as a concept in lay terms.
5. How do you request the alternate limit based upon conventional control technology or the 20% reduction of the upper 99th percentile?
6. What is the magnitude of the phosphorus discharges and the differences between the amount of pounds discharged and the target value.
7. When are the payments due with respect to the source reduction payments?
8. How is the amount discharged determined – for what time period and does this change year to year or is it the same the entire permit term?
9. What happens if the source reduction option doesn't result in the expected reductions?
10. Wanted to have the DOA have to publish the finalization of any revision or elimination of the variance. *OK*
11. Whether a County can opt out of receiving money and implementing programs? *yes*
12. What do the sentences “At least 60% of the funding shall be for providing cost share dollars. If the county hires one full time equivalent person from such funds, 75% of the funding received thereafter shall be for providing cost share dollars” mean?
13. Is the amendment to s. 283.13 really necessary
14. What is the averaging period for the limits?

Phosphorus Compliance Options

Section 283.151 is created to read:

283.151 MULTIDISCHARGER VARIANCE FOR PHOSPHORUS.

(1) PURPOSE. The treatment of wastewater to meet water quality standards for phosphorus, and wasteload allocations for phosphorus in approved total maximum daily loads that are derived from water quality standards, is likely to result in substantial and widespread adverse social and economic impacts on a statewide basis. The purpose of this section is to achieve the phosphorus water quality criteria in the most economically efficient manner, and as soon as possible, taking into consideration contributions of phosphorus from point and nonpoint sources in a watershed.

(2) REQUEST FOR VARIANCE.

(a) Where a determination has been made pursuant to sub (3) that the water quality standards for phosphorus, or wasteload allocations for phosphorus in approved total maximum daily loads that are derived from water quality standards, will result in substantial and widespread adverse social and economic impacts, an existing point source may submit a request for a variance under this section as part of a permit application for reissuance or as a request for permit modification.

(b) The department shall grant the variance request upon showing that:

1. The point source is in a category for which The Department of Administration has, pursuant to sub (3), determined the water quality standards for phosphorus, or the wasteload allocations for phosphorus in approved total maximum daily loads that are derived from water quality standards, are likely to result in substantial and widespread adverse social and economic impacts to point sources;

Comment [A1]: Question 1

2. The point source requests the limits set forth in sub. (4), or the interim permit limits or the limit based upon conventional control technology appropriate for the category of the source set forth in sub. (5)(a) 1.-4, whichever are applicable, be incorporated into the permits; and

Comment [A2]: Question 5

3. The request contains an analysis of the point source's facility operations to optimize phosphorus reductions with existing infrastructure which will comply with the conditions set forth in sub (4) or (5).

(c) The department shall incorporate the interim permit limits and phosphorus reduction requirements set forth in sub. (4) or (5) and any determination made pursuant to sub. (6) into the permit.

(3) DETERMINATION OF SUBSTANTIAL AND WIDESPREAD ADVERSE SOCIAL AND ECONOMIC IMPACTS.

(a) Within 60 days of the effective date of this section [LRB inserts date], the Department of Administration shall determine whether the phosphorus water quality standards or wasteload allocations for phosphorus in approved total maximum daily loads that are derived from water quality standards will result in a substantial and widespread adverse social and economic impacts on a statewide basis for point sources subject to permits under ss. 283.31 or 283.33.

(b) Department of Administration's determination in this subsection shall contain the following:

1. A calculation of the costs of complying with more stringent water quality based effluent limits.
2. A determination whether the cost of compliance will result in substantial adverse social and economic impacts.
3. A determination whether the cost of compliance will result in widespread adverse social and economic impacts.
4. If the facility is a publicly owned treatment or collection facility, a comparison of the state median household income to the cost of compliance to the state.
5. A review of the cost of compliance for point source discharges from lagoon systems and systems discharging less than 0.1 million gallons per day of wastewater.

(4) VARIANCE FOR MINOR DISCHARGES. Point sources with minor discharges Point sources with discharges from lagoon wastewater treatment facilities, or discharges from facilities of 0.1 million gallons per day or less shall comply with the following:

(a) A limit that maintains the performance of the facility at a level equal to the performance of the facility on the effective date of this section [LRB inserts date].

(b) By the end of the first permit term of a permit reissued after the effective date of this act, a permittee shall implement a plan to optimize the treatment capabilities of the existing facility.

(c) By the end of the second permit term of a permit reissued after the effective date of this act, the effluent limit shall be set at the level of optimized phosphorus reduction allowed without major facility upgrades calculated as a monthly average. The point source may be eligible for this effluent for the useful life of the lagoon or until the source increases the discharge to above 0.1 million gallons per day.

Comment [A3]: Question 2 (see definition section)

Comment [A4]: Question 3

(5) VARIANCE FOR OTHER DISCHARGES.

(a) Interim permit limits. Point sources with discharges not covered under sub. (4) shall comply with the following interim permit limits:

1. By the end of the first permit term of a permit reissued after the effective date of this act, the effluent limit shall be set at the greater of 0.8 mg/l on a 6 month average or a 20% reduction of the average of the 6 month average over a 5 yearsupper 99th percentile of the 30 day average discharge.

Comment [A5]: Question 14

Comment [A6]: Question 4

2. By the end of the second permit term of a permit reissued after the effective date of this act, the effluent limit shall be set at the greater of 0.6 mg/l on a 6 month average or the limit that can be achieved by the application of conventional control technology appropriate for the category of the source.

Comment [A7]: Question 14

3. By the end of the third permit term of a permit reissued after the effective date of this act, the effluent limit shall be set at the greater of 0.5 mg/l on a 6 month average or the limit that can be achieved by the application of conventional control technology appropriate for the category of the source.

Comment [A8]: Question 14

4. By the end of the fourth permit term of a permit reissued after the effective date of this act, the effluent limit shall be set at the greater of 0.4 mg/l on a 6 month average or the limit that can be achieved by the application of conventional control technology appropriate for the category of the source. This permit shall also include a compliance schedule not to exceed 5 years following the end of the fourth permit requiring compliance with the phosphorus water quality standard or wasteload allocations for phosphorus in approved total maximum daily loads that are derived from water quality standards.

Comment [A9]: Question 14

5. For purposes of this subsection, conventional control technology, is the optimal use of technology appropriate for the source of the category that is in use at similar facilities in the majority of the states adjoining Wisconsin.

(b) Phosphorus source reduction.

1. In addition to achieving the interim limit in each permit term as set forth in sub. (a), the point source shall implement one of the measures in this paragraph to reduce nonpoint sources of phosphorus in an amount equal to the difference between the amount of pounds of phosphorus discharged by the permittee and a target value of 0.2 mg/l on a 6 month average phosphorus.

Comment [A10]: Question 14

2. The reduction required under this paragraph shall be achieved by any of the following or combination of the following:

a. The discharger makes a payment pursuant to sub. (9) for each pound of phosphorus discharged above the target value. The base payment will be set at \$50 per pound of phosphorus on the effective date of this rule. The base shall be adjusted

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Black

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.5" + Indent at: 0.75"

annually on April 1 of each year with adjustments based on changes in the consumer price index. The amount of payment per pound shall be fixed for the permit term using the base payment in effect in the year that a permit is reissued.

Comment [A11]: Moved to section (9) Question 7-8

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Black

b. The point source reaches a binding, written agreement with the department under which the person constructs a project or implements a plan that results in a reduction of phosphorus from sources within the basin, other than the source covered by the permit, in the amount of the difference between the existing amount of phosphorus discharged and the target value.

c. The point source reaches a binding, written agreement with another person that results in a reduction of phosphorus from sources within the basin in the amount of the difference between the existing amount of phosphorus discharged and the target value to reduce the amount of phosphorus within the basin. Prior to relying on the agreement the point source shall obtain the approval of the department.

(6) REVIEW OF TECHNOLOGY.

(a) Immediately after September 1, 2016, and every 3 years thereafter, the department shall prepare a report regarding updates in treatment technology and limits that are reasonably achievable. The report shall include all of the following:

1. A determination whether technology is reasonably available for treatment to a more stringent limit.
2. A determination whether technology is cost effective.
3. Consultation with impacted sources and other interested parties.
4. An evaluation of whether technology is reasonably available for particular groups category of sources dischargers.

Comment [A12]: Question 1

(b) The department shall submit the report to the Department of Administration immediately after September 1, 2016 and every 3 years thereafter. The Department of Administration shall review the report and make a determination within 3 months of receiving the report whether a more stringent effluent limit is appropriate given the availability and cost effectiveness of technology and whether compliance with the phosphorus water quality standard will result in substantial and widespread adverse social and economic impacts for sources subject to permits under ss. 283.31 or 283.33.

See Technology

(c) The Department of Administration shall provide public notice and the opportunity for public comment on the determination pursuant to par. (b). The comment period shall be at least 30 days.

(d) Any revision or elimination of this variance shall become effective for an individual permittee and incorporated into a permit only after modification or revocation and reissuance of a permit.

(8) EXISTING PERMITS.

If, before the effective date of this act, a permittee was issued a permit that includes water quality based effluent limitations for phosphorus, or a wasteload allocation for phosphorus in approved total maximum daily loads that are derived from water quality standards, and also includes a compliance schedule for submitting compliance options to the department, the permittee may request and be granted the variance for phosphorus as set forth in sub. (2) as one of the variance compliance options.

(9) PAYMENT TO COUNTY.

(a) Requirement for point sources.

1. Point sources demonstrating compliance pursuant to sub. (5)(b)2. shall make the payment to a county within the basin in which the discharge occurs or any other county or project if approved by the department. For purposes of this section a basin shall be determined based on a hydrologic unit code of 8.

2. The payment shall be based upon the 6 month average discharge from the previous year. Payment shall be made to the County by March 1 of the next calendar year.

3. The base payment will be set at \$50 per pound of phosphorus on the effective date of this rule. The base shall be adjusted annually on April 1 of each year with adjustments based on changes in the consumer price index. The amount of payment per pound shall be fixed for the permit term using the base payment in effect in the year that a permit is reissued.

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Black

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 2 + Alignment: Left + Aligned at: 0.5" + Indent at: 0.75"

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Black

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 2 + Alignment: Left + Aligned at: 0.5" + Indent at: 0.75"

Comment [A13]: Questions 7-8

(b) Requirements for counties.

1. The payment made under this subsection shall be used for the purposes of providing cost sharing pursuant to s. 281.16(3)(e) or (4) or funding of positions to implement phosphorus reduction projects.

2. At least 60% of the annual payments shall be for providing cost share dollars. In the event the county hires one full time equivalent person to implement phosphorus reduction projects, the county shall increase the amount provided to cost share dollars in the following calendar year to at least 75% of the annual payments received. The determination of percentage to be directed to cost shares dollars shall be based upon funding of staff positions the previous calendar year and shall remain fixed for the entire calendar year regardless of a change in the funding of positions during that calendar year. At least 60% of the funding shall be for providing cost share dollars. If the county hires one full-time equivalent person from such funds, 75% of the funding received thereafter shall be for providing cost share dollars.

Formatted: Font: (Default) Times New Roman, 12 pt

Comment [A14]: Question 12

2. Each county receiving payments under this provision shall submit an annual report to the department, Department of Administration and any discharger that has submitted payments in the previous year. The report shall document and verify the phosphorus

projects undertaken, document the associated phosphorus reductions using accepted modeling methodology, and identify any positions funded.

3. The department shall evaluate the county annual reports. If the department determines that the payments are not being used to effectively reduce nonpoint sources of phosphorus, the department may instruct the point source to direct the payments in future years to another county or project approved by the department.

4. Counties that do not want to participate in the program in this subsection shall notify the department. The department may designate an alternate entity to receive the payments and distribute the funds in that county.

Comment [A15]: Question 11

(10) RIGHT TO HEARING. The right to a hearing regarding department decisions made pursuant to this section shall be limited to the right to a hearing pursuant to s. 283.63.

Section 283.13(5) is amended to read as follows:

(5) MORE STRINGENT LIMITATIONS. The department shall establish more stringent effluent limitations than required under subs. (2) and (4) and shall require compliance with such water quality based effluent limitations in any permit issued, reissued or modified if these limitations are necessary to meet applicable water quality standards, treatment standards, schedules of compliance or any other state or federal law, rule or regulation. The department shall require compliance with these water quality based effluent limitations by no later than July 1, 1977, or by a later date as specified in the water quality standard, treatment standard, schedule of compliance or other state or federal law, rule or regulation. In determining a later date for compliance with water quality based effluent limitations for phosphorus, the department may use an adaptive management process that extends over five permit terms.

Definitions:

"Basin" shall mean the area within the hydrologic unit code 8.

"Category of a source" shall mean point source categories as defined in 40 C.F.R Chap. I, Subch. N.

"Major facility upgrade" shall mean the construction or installation necessary to meet water quality based effluent limits, such as, but not limited to, filtration systems, that require the acquisition of a substantial amount of property to accommodate the needed modifications or where there is a need to develop an extensive financing plan and obtain financing for the proposed construction or installation.

Comment [A16]: From NR 217.17

"Minor discharge" shall mean point sources with discharges from lagoon wastewater treatment facilities, or discharges from facilities of 0.1 million gallons per day or less.

Comment [A17]: Question 2



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3079/P1
RCT/.....
js

Friday 10/4

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Coer Cat

1 **AN ACT**...; relating to: phosphorus discharges to the waters of the state and a
2 statewide variance from the water quality standard for phosphorus for certain
3 dischargers.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 283.16 of the statutes is created to read:
5 **283.16** ~~Multiple discharger~~ ^{statewide} variance for phosphorus. (1) DEFINITIONS.

6 In this section:

7 (a) "Basin" means the drainage area identified by an 8-digit hydrologic unit
8 code, as determined by the U.S. Geological Survey.

****NOTE: The federal term for the 8-digit hydrologic unit is "subbasin." Should the draft use the term "subbasin"?

1 (b) "Category" means a class or category of point sources specified by the
2 department under s. 283.13 (1). ✓

****NOTE: The list is in NR 220.02, Wis. Adm. Code. The categories in the rule differ
somewhat from the federal categories. Is this approach acceptable? ✓

3 (c) "Conventional control technology" means optimal use of a technology for
4 controlling phosphorus discharges that is appropriate for a point source and that is
5 in use at point sources in the same category in the majority of states adjoining this
6 state.

****NOTE: Might there be more than one technology that would satisfy this
definition for a particular point source? If so, I assume that the technologies might not
be equally effective at removing phosphorus. Would a permittee be allowed to select any
of these technologies to use as the basis for setting an interim limit under sub. (6)? Should
it be "the optimal use of the most effective technology for controlling phosphorus
discharges ..." or something like that?

7 (d) "Existing source" means a point source that was covered by a permit on
8 December 1, 2010. ~~④~~ ~~NOTE: INSERT FROM p. 3~~

9 e ~~⑤~~ "Major facility upgrade" means construction or installation, including
10 installation of a filtration system, for which the permittee must acquire a substantial
11 amount of property or for which the permittee must the develop an extensive
12 financing plan and obtain financing.

****NOTE: Please consider whether this definition is sufficiently clear to ensure that
it will have the effect that is wanted where the term is used in the draft (sub. (5) (b)). ✓

13 f ~~⑥~~ "Minor source" means a point source with a discharge from a lagoon
14 treatment work or with a discharge of less than 100,000 gallons per day.

⑤ ****NOTE: I used "treatment work" because it is a defined term for ch. 283. It might
be helpful to define "lagoon treatment work" or "lagoon system." NR 217.19 (1) (a), Wis.
Adm. Code refers to a system "that consists primarily of a stabilization pond system or
a lagoon system." Perhaps the draft should include the "consist~~s~~ primarily of"
requirement. Should this also mention stabilization pond systems? ←

15 g ~~⑦~~ "Nonpoint source" has the meaning given in s. 281.16 (1) (e).

16 h ~~⑧~~ "Target value" means the number of pounds of phosphorus that would be
17 discharged from a point source during a year if the average concentration of

1 phosphorus in the effluent discharged by the point source during the year was 0.2
2 milligrams per liter.

3 (j) "Water quality based effluent limitation" means an effluent limitation under
4 s. 283.13 (5), including an effluent limitation based on a total maximum daily load
5 under 33 USC 1313 (d) (1) (C) approved by the federal environmental protection
6 agency.

7 (2) INITIAL DETERMINATION CONCERNING THE WATER QUALITY STANDARD FOR
8 PHOSPHORUS. (a) No later than the 60th day after the effective date of this paragraph
9 [LRB inserts date], the department of administration shall determine whether
10 attaining the water quality standard for phosphorus ^{adopted under s. 281.15} through compliance with water
11 quality based effluent limitations is not feasible because it would cause substantial
12 and widespread adverse social and economic impacts on a statewide basis.

****NOTE: Please note that "permit" is a defined term for ch. 283 Does federal law
require notice and opportunity for public comment for this initial determination? *move to note after p. 2 line 8*

13 (b) The department of administration shall include all of the following in its
14 determination under par. (a):

15 1. A calculation of the statewide cost of compliance with water quality based
16 effluent limitations for phosphorus.

17 2. A calculation of the statewide per household cost for water pollution control
18 by publicly owned treatment works after complying with water quality based
19 effluent limitations for phosphorus and a calculation of the percentage of median
20 household income the per household cost represents.

****NOTE: The request seemed to be referring only to the additional costs that would
be incurred because of WQBEL's for phosphorus, but my impression is that EPA looks at
what the total costs of sewage treatment would be after the technology for complying with
the WQBEL is installed.

1 3. A calculation of the statewide cost for minor sources to comply with water
2 quality based effluent limitations for phosphorus.

3 4. A determination of whether the cost of compliance with water quality based
4 effluent limitations for phosphorus would cause substantial adverse social and
5 economic impacts on a statewide basis.

6 5. A determination of whether the cost of compliance with water quality based
7 effluent limitations for phosphorus would cause widespread adverse social and
8 economic impacts on a statewide basis.

9 (c) The department of administration shall send a notice that describes its
10 determination under par. (a) and the information under par. (b) to the legislative
11 reference bureau for publication in the administrative register. ✓

12 (d) If the department of administration determines under par. (a) that
13 attaining the water quality standard for phosphorus through compliance with water
14 quality based effluent limitations is not feasible, the determination remains in effect
15 until the department of administration finds under sub. (3) (c) 1. that the
16 determination is no longer accurate. ✓

17 **(3) REVIEW OF FINDINGS AND REQUIREMENTS OF VARIANCE.** (a) Every 3 years,
18 beginning in 2016, if a determination under sub. (2) (a) that attaining the water
19 quality standard for phosphorus through compliance with water quality based
20 effluent limitations is not feasible is in effect, the department of natural resources
21 shall submit a report, no later than September 1, to the department of
22 administration regarding any changes in the technology available for controlling
23 phosphorus discharges from point sources and regarding the effluent limitations for
24 phosphorus that are reasonably achievable. The department of natural resources

1 shall consult with permittees that would be subject to water quality based effluent
2 limitations for phosphorus and other interested parties in preparing the report.

****NOTE: The variance for sources other than minor sources will terminate (after applying for 4 permit terms), so at some point this determination should only apply to minor sources. The draft does not yet reflect that. Does federal law or EPA practice affect whether "reasonably achievable" is a standard that is acceptable here?

3 (b) The department of natural resources shall include all of the following in
4 each report under par. (a):

5 1. A determination of whether technology is reasonably available for point
6 sources to comply with effluent limitations for phosphorus that are more stringent
7 than those in sub. (5) or (6) (a). ✓ ✓

8 2. A determination of whether technology is reasonably available for any
9 category of point sources to comply with effluent limitations for phosphorus that are
10 more stringent than those in sub. (5) or (6) (a). ✓

11 3. A determination of whether any technology that is available for compliance
12 with effluent limitations for phosphorus that are more stringent than those in sub.
13 (5) or (6) (a) is cost effective. ✓

14 (c) The department of administration shall review each report under par. (a)
15 and, within 3 months of receiving the report, do all of the following:

16 1. Decide whether the determination that attaining the water quality standard
17 for phosphorus through compliance with water quality based effluent limitations is
18 not feasible remains accurate. ✓

19 2. If the department decides under subd. 1. that the determination remains
20 accurate, decide whether it is appropriate to apply more stringent effluent
21 limitations than those in sub. (5) or (6) (a) to all point sources or to any category of
22 point sources, based on the availability and cost effectiveness of technology for
23 compliance and, if so, decide what those more stringent effluent limitations are.

1 (d) The department of administration shall provide public notice of its decisions
 2 under par. (c) and shall provide the opportunity for public comment on the decisions
 3 for at least 30 days following the public notice. ✓

****NOTE: Should this require preliminary decisions before notice and comment and then final decisions? In other words, should there be an opportunity for the public comments to have an effect on DOA's decisions?

4 (e) The department of administration shall send a notice that describes its
 5 decisions under par. (d) to the legislative reference bureau for publication in the
 6 administrative register. ✓

7 ^{attaining} (4) AVAILABILITY OF VARIANCE. (a) When a determination under sub. (2) (a) that
 8 ^{at least} ~~implementing~~ the water ^{quality standard} ~~quality based effluent limitations~~ for phosphorus ~~by~~
 9 ^{through compliance with} ~~including~~ water quality based effluent limitations is not feasible is in effect, a
 10 permittee may apply for the ^{multiple discharger} ~~multiple discharger~~ variance under this section for an
 11 existing source in any of the following ways:

- 12 1. By requesting the variance in the application for reissuance of the permit.
- 13 2. By requesting a modification of the permit.

****NOTE: Does the modification statute need to be amended?

14 3. If the department issued a permit to the permittee before the effective date
 15 of this subdivision ... [LRB inserts date], that includes a water quality based effluent
 16 limitation for phosphorus and that requires the permittee to submit to the
 17 department options for complying with the water quality based effluent limitation,
 18 by submitting a request for the variance as a compliance option. ✓

19 (b) 1. The department shall approve an application under par. (a) for a minor
 20 source. ✓

21 2. The department shall approve an application under par. (a) for a point source
 22 that is not a minor source if the permittee includes in its application an analysis that

1 demonstrates that through optimizing the operation of the point source to control the
2 discharge of phosphorus, the permittee will comply with the requirements of the
3 variance that are applicable to the point source.

4 (c) The variance under this section remains in effect for a point source until the
5 permit is reissued, modified, or revoked and reissued.

6 (5) VARIANCE PROVISIONS FOR MINOR SOURCES. Except as provided in sub. (7), the
7 department shall include all of the following in the permit for a minor source for
8 which the department approves the variance under this section:

9 (a) In the first permit for which the department approves the variance, an
10 initial effluent limitation^{for phosphorus} that is equal to the performance of the minor source on the
11 effective date of this paragraph [LRB inserts date].

****NOTE: I think that the draft should be more specific about what is meant by "the performance of the facility on the effective date."

12 (b) In the first permit for which the department approves the variance, a
13 requirement to implement, before the end of the term of that permit, a plan to
14 optimize the operation of the minor source to limit the amount of phosphorus
15 discharged to the extent possible without a major facility upgrade.

16 (c) In the second permit for which the department approves the variance, a
17 requirement to achieve, by the end of the term of that permit, compliance with an
18 effluent limitation for phosphorus equal to the concentration of phosphorus achieved
19 by optimizing the operation of the minor source as provided in the plan under par.
20 (b), calculated as a monthly average.

****NOTE: I think that the language should be more specific about what "by the end of the term of that permit" means. Something like "to achieve, by the last month of the term of that permit," might work, if that is what is intended.

1 (d) In the third and each subsequent permit for which the department approves
2 the variance, a requirement to maintain compliance with the effluent limitation for
3 phosphorus described in par. (c). ✓

****NOTE: Where to put language about useful life of lagoon system?

4 (6) VARIANCE PROVISIONS FOR OTHER DISCHARGERS. (a) Except as provided in sub.
5 (7), the department shall include all of the following in the permit for a point source,
6 other than a minor source, for which the department approves the variance under
7 this section:

8 1. In the first permit for which the department approves the variance, a
9 requirement to achieve, by the end of the term of that permit, compliance with an
10 effluent limitation ^{for phosphorus} equal to the greater of 0.8 milligrams per liter as a 6¹/₁₂ month
11 average or a concentration as a 6¹/₁₂ month average that is 20 percent lower than the
12 average concentration of phosphorus in the source's effluent for the past 5 years.

****NOTE: Is this what is intended? Might there be an existing source that would not have operated for 5 years when the effluent limitation must be established?

13 2. In the 2nd permit for which the department approves the variance, a
14 requirement to achieve, by the end of the term of that permit, compliance with an
15 effluent limitation ^{for phosphorus} equal to the greater of 0.6 milligrams per liter as a 6¹/₁₂ month
16 average or the concentration of phosphorus that can be achieved by the use of
17 conventional control technology.

****NOTE: Might a limit based on conventional control technology be higher than a limit under subd. 1. based on the source's past performance? If so, might ~~there~~ be a problem with getting EPA approval of a waiver that allows a source to discharge a higher concentration of phosphorus than allowed in the earlier permit term?

Should "as a 6¹/₁₂ month average" also be included for a limit based on conventional control technology? ←

18 3. In the 3rd permit for which the department includes the variance, a
19 requirement to achieve, by the end of the term of that permit, compliance with an
20 effluent limitation ^{for phosphorus} equal to the greater of 0.5 milligrams per liter as a 6¹/₁₂ month

there

1 average or the concentration of phosphorus that can be achieved by the use of
2 conventional control technology.

3 4. In the 4th permit for which the department includes the variance, a
4 requirement to achieve, by the end of the term of that permit, compliance with an
5 effluent limitation ^{for phosphorus} equal to the greater of 0.5 milligrams per liter as a ~~6~~ month
6 average or the concentration of phosphorus that can be achieved by the use of
7 conventional control technology and a compliance schedule that requires the
8 permittee to achieve compliance with the water quality based effluent limitation for
9 phosphorus not more than 5 years after the end of the term of that permit.

10 (b) In the permit for a point source, other than a minor source, for which the
11 department approves the multiple discharger ^{under this section} variance for phosphorus, in addition
12 to the requirements under par. (a) or sub. (7), the department shall require the ✓
13 permittee to implement the permittee's choice of the following measures to reduce
14 the amount of phosphorus entering the waters of the state: ✓

15 1. Making payments to a county or other entity as provided in sub. (8).

16 2. Entering into a binding, written agreement with the department under
17 which the permittee constructs a project or implements a plan that is designed to
18 result in an annual reduction of phosphorus entering the waters of the state from
19 other sources in the basin in which the point source is located, in an amount equal
20 to the difference between the annual amount of phosphorus discharged by the point
21 source and the target value.

****NOTE: Is this intended to be limited to reductions from nonpoint sources?

22 3. Entering into a binding written agreement, that is approved by the
23 department, with another person under which the person constructs a project or
24 implements a plan that is designed to result in an annual reduction of phosphorus

1 entering the waters of the state from other sources in the basin in which the point
2 source is located, in an amount equal to the difference between the annual amount
3 of phosphorus discharged by the point source and the target value.

4 (7) MORE STRINGENT EFFLUENT LIMITATIONS. If the department of administration
5 determines under sub. (3) (c) 2. that it is appropriate to apply more stringent effluent
6 limitations than those in sub. (6) or (7) (a) to all point sources or to a category of point
7 sources, the department of natural resources shall include the more stringent
8 effluent limitations specified under sub. (3) (c) 2. in permits reissued, modified, or
9 revoked and reissued after that determination for all point sources or for the category
10 of point sources to which the more stringent effluent limitations apply.

11 (8) PAYMENTS TO COUNTIES OR OTHER ENTITIES. (a) 1. A permittee that chooses
12 to make payments for phosphorus reduction under sub. (6) (b) 1. shall make the
13 payments to a county that is participating in the program under this subsection and
14 that has territory within the basin in which the point source is located or, with the
15 approval of the department, to another county participating in the program or to
16 another entity. The permittee shall make a payment by March 1 of each calendar
17 year in the amount equal to the per pound amount under subd. 2. times the number
18 of pounds by which the amount of phosphorus discharged by the point source during
19 the previous year exceeded the point source's target value.

20 2. The per pound payment for this subsection is \$50 beginning on the effective
21 date of this paragraph [LRB inserts date]. Beginning in 2015, the department
22 shall adjust the per pound payment each year by a percentage equal to the average
23 annual percentage change in the U.S. consumer price index for all urban consumers,
24 U.S. city average, as determined by the federal department of labor, for the 12
25 months ending on the preceding December 31. The adjusted amount takes effect for

subdivision

1 permits reissued on April 1. The per pound payment in effect when a permit is
2 reissued applies for the term of the permit.

****NOTE: I assumed that the per pound payment should not be adjusted in 2014. ✓
Please let me know if this should be changed.

b

3 (c) 1. A county or other entity shall use payments received under this subsection
4 to provide cost sharing under s. 281.16 (3) (e) or (4) for projects to reduce the amount
5 of phosphorus entering the waters of the state or for staff to implement projects to
6 reduce the amount of phosphorus entering the waters of the state from nonpoint
7 sources.

8 2. A county or other entity shall use at least 60 percent of the amounts received
9 under this subsection to provide cost sharing under s. 281.16 (3) (e) or (4). If, during
10 a year, a county or other entity uses payments received under this subsection to fill
11 one or more full-time equivalent positions, the county or other entity shall use at
12 least 75 percent of the payments received under this subsection in the next year to
13 provide cost sharing under s. 281.16 (3) (e) or (4).

14 3. A county or other entity receiving payments under this subsection shall
15 submit an annual report to the department of natural resources, the department of
16 administration, and to each permittee from which it received payments during the
17 previous year. In the annual report, the county or other entity shall describe the
18 projects for which it provided cost sharing, quantify the associated phosphorus
19 reductions achieved using accepted modeling technology, and identify any staff
20 funded with the payments.

****NOTE: There should probably be a deadline for submitting the annual report.

21 4. The department shall evaluate reports submitted under subd. 3. If the
22 department determines that a county or other entity is not using the payments to
23 effectively reduce the amount of phosphorus entering the waters of the state from

1 nonpoint sources, the department may require permittees who made the payments
2 to make future payments to a different county or entity.

3 5. A county shall notify the department if it chooses not to participate in the
4 program under this subsection. ✓

5

6

(END)